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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,230	10/20/2003	David A. Ebert	60,137-222; 350-3315-U	4065

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EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT PAPER NUMBER

3676

DATE MAILED: 09/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,230

Applicant(s)

EBERT, DAVID A.

Examiner

Gary Estremsky

Art Unit

3676

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,797,422 to Tokarz.

Tokarz '422 teaches Applicant's claim limitations for a lever including : a "shank" - including 20, a "handle" - including 22, where the written Background of the Invention indicates that decorative materials including porcelain or clear plastic (inherent fragility well known) are used for the handle portion where one of ordinary skill in the art recognizes that shank portion is likely to be chrome-plated brass for example.

As regards claim 5, see Fig 4 for example.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

Art Unit: 3676

said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,797,422 to Tokarz.

While Tokarz '422 does not explicitly disclose a "crystal material" for example, the handle material is explicitly disclosed to be "Decorative" where one of ordinary skill in the art recognizes that "crystal" glass, or quartz crystal, jade, etc. handles would be decorative and useable with respect to the teachings of Tokarz '422. One of ordinary skill in the art would have found it obvious at the time of the invention to use a "crystal material" for the handle 22 of Tokarz '422 to appeal to various buyer market groups. One of ordinary skill in the art would have more than a reasonable expectation of success since the proposed modification would not otherwise affect function of the device but is entirely consistent with the explicit and implicit teachings of the reference. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

5. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,797,422 to Tokarz in view of U.S. Pat. No. 2,105,617 to Shaw.

While the arrangement at 46,48 of Tokarz '422 might be assumed to be a single piece, head of the bolt, Shaw '617 teaches that it is well known in the art to provide a separate cap (41) to cover a bolt used to attach a handle. It would

Art Unit: 3676

have been obvious to one of ordinary skill in the art at the time of the invention to provide a separate cap for covering the bolt of Tokarz '422, as modified to ensure that no aesthetically unwanted screw slots, etc are visible. One of ordinary skill in the art would have more than a reasonable expectation of success in making the proposed modification.

As regards claim 4, a cross section through the handle at 40 (42 in Fig 4) fully anticipates limitation especially noting that a cross-section in that area will be perpendicular to the handle's axis whereby due to inherent geometry, the area of the 'donut' shape cross section of the handle will be considerably more than twice the area of the circle-shaped bore.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,797,422 to Tokarz in view of U.S. Pat. No. 1,829,365 to Meyer.

Although Tokarz '422 discloses a "shallow pocket" in the shank for receiving the handle portion, it is not particularly clear if there is an angle to that portion or not whereby it is not clear that "frusto-conical" limitation is taught. However, Meyer '365 discloses a similar shank/handle structure and explicitly illustrates a frusto-conical shallow pocket in the shank for receiving a correspondingly-shaped handle portion in Fig 1. It would have been an obvious design choice or engineering expedient to one of ordinary skill in the art to provide the handle/shank of Tokarz '422 with a frusto-conical shaped shallow pocket as taught by Meyer '365 in order to reduce any minor wobbliness

Art Unit: 3676

resulting from manufacturing tolerances where it is well known in the art that a tapered connection is more tolerant of tolerances.

7. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,797,422 to Tokarz in view of U.S. Pat. No. 1,829,365 to Meyer and further in view of U.S. Pat. No. 2,105,617 to Shaw.

While the arrangement at 46,48 of Tokarz '422 might be assumed to be a single piece, head of the bolt, Shaw '617 teaches that it is well known in the art to provide a separate cap (41) to cover a bolt used to attach a handle. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a separate cap for covering the bolt of Tokarz '422, as modified to ensure that no aesthetically unwanted screw slots, etc are visible. One of ordinary skill in the art would have more than a reasonable expectation of success in making the proposed modification.

As regards claim 8, while the cap of Shaw '617 is shown to have an angled handle-contacting surface defining a frusto-conical shaped surface, it is not clear that the handle's contacting surface is angled. However, it would have been obvious to one of ordinary skill in the art in full consideration of each of the three references (relied upon) to provide the the handle and cap of Tokarz '422, as modified in view of Meyer '365 and Shaw '617 with corresponding angled surfaces defining a frusto-conical shape as taught by Meyer '365 for the purpose of taking up tolerance as well known in the art.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure..

Design Pat. No. 419,647 to Warshawsky.

U.S. Pat. No. 1,744,458 to Ellingson.


U.S. Pat. No. 2,094,982 to Gerard.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3676

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Estremsky
Primary Examiner
Art Unit 3676